



DEPARTMENT OF LAW  
OFFICE OF THE  
**Attorney General**  
STATE CAPITOL  
Phoenix, Arizona 85007

BRUCE E. SABBITT  
ATTORNEY GENERAL

May 6, 1977

LAW LIBRARY  
ARIZONA ATTORNEY GENERAL

Suzanne Dandoy, M.D., M.P.H.  
Director, Department of Health Services  
1740 West Adams  
Phoenix, Arizona 85007

Re: 77-99 (R77-126)

Dear Doctor Dandoy:

Your letter of April 1, 1977 posed the following question:

Does A.R.S. § 36-433 require a person to obtain a certificate of need to purchase land for investment or possible future health care institution purposes but which cannot be used for such purposes without obtaining a separate certificate of need?

Statutory language which relates to this issue is found in A.R.S. § 36-433.A. which is pertinent part reads:

No person required to obtain a certificate of need shall offer to the public or develop any new or substantially modified services<sup>1</sup> or facilities<sup>2</sup> of a health care institution.

---

1. A.R.S. § 36-401.10 defines health care institutions as "every place, institution, building or agency, whether organized for profit or not, which provides facilities with medical services, nursing services or health-related services." (Emphasis added.) Each of these services is also separately defined in § 36-401.

2. A.R.S. § 36-401.8 defines facilities as ". . . buildings or capital equipment used by a health care institution for providing any of the types of services as defined in this chapter."

without first obtaining a certificate of need therefor from the department of health services. Certificates of need shall be required under the following circumstances:

1. For capital expenditures which are in excess of three per cent of the institution's budgeted annual expenses or capital expenditures over one hundred thousand dollars, whichever is less; or

. . .

4. . . . . For purposes of this section capital expenditure means acquisition, by lease or purchase of a capital asset in the nature of land, buildings, fixtures or durable equipment. (Footnote references added)

Viewed in isolation it may appear from the quoted language that a person is required to obtain a certificate of need prior to the acquisition of any land which he expects ultimately to use for health care institution purposes. A careful analysis of this language and reference to other pertinent statutory provisions discloses, however, that such is not the case.

The initial sentence, in essence, prohibits any person required to obtain a certificate of need from offering or developing any new or modified services or facilities of a health care institution without first obtaining a certificate of need therefor. This language specifies what a certificate of need is for, i.e. offering or developing new or substantially modified services or facilities. The second sentence specifies the circumstances under which such a certificate is required. Among them is making capital expenditures in excess of certain amounts. Acquisition of land is among the items for which a certificate of need may be required; however, such acquisition must be a part of the development or offering of new or modified services or facilities of a health care institution if the requirements of this statute are to be applicable. Whether the prospective purchaser of land (at a price in excess of the applicable exclusion) is required to first obtain a certificate of need is dependent

Suzanne Dandoy, M.D., M.P.H.  
May 6, 1977

Page Three

upon his plans to utilize it for health care institution purposes. The only "person required to obtain a certificate of need" is one who desires to develop or offer to the public certain services or facilities.

The purpose of § 36-433 is to prevent the development or offering of health care institution services by a person who has not satisfied the Department of Health Services and the authorized local agency, in accordance with procedures and criteria specified, that there is a need for the services and facilities proposed. There is nothing to suggest that any person is required to obtain more than one such certificate prior to the development or offering of a particular health care institution service or facility. The purpose of the definition of "capital expenditures" is to specify the types of costs that are to be included in the computation to determine whether the applicable minimum amount of capital expenditure was or will be reached and, if so, that a certificate of need be obtained prior to such development or offering of services to the public.

This explication is supported by the other two subsections of § 36-433. Subsection B in pertinent part provides:

An application for a certificate of need shall be filed . . . prior to undertaking any substantial expenditures in preparation for such offering or development. (Emphasis added.)

The words "offering or development" clearly refer back to "offer to the public or develop" in Subsection A. Subsection C. in pertinent requires:

. . . at least the following information to be included in the application pertaining to the proposed services or facilities:

1. The description, nature and purpose, including method of proposed construction in the case of facilities.
2. What health problems or needs will be satisfied by the proposed services or facilities will be needed.

3. What geographical areas and population groups will be served by the proposed services or facilities.

4. The estimated cost and method of financing.

5. What effect the cost and financing will have on the costs, rates and charges of the applicant, on other costs to be borne by the public.

6. The ability of the applicant to comply with all applicable federal, state and local laws, ordinances and regulations.

7. The ability of the applicant to comply with all applicable professional and institutional standards.

8. The qualifications and ability of the applicant to provide and obtain proper financing, staffing, equipping, management and operation of the proposed services or facilities.

9. A certificate stating that the applicant has reviewed, or attempted to review, the proposed construction or modification with other health care institutions in the area to be served for the purpose of exploring the feasibility of coordinating with such institutions' programs, services or facilities in accordance with the guidelines specified in § 36-433.01, subsection B, paragraphs 1 through 8. In cases where coordination among institutions is planned, a statement concerning the implementation of such coordination shall be included which shall incorporate as guidelines the subjects of required findings specified in § 36-433.01, subsection B, paragraphs 1 through 8 and this subsection.

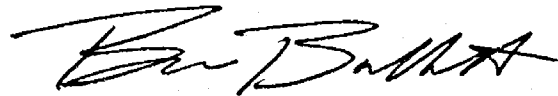
10. Proof that the application conforms to health plans adopted by the authorized local agency. (Emphasis added.)

Suzanne Dandoy, M.D., M.P.H.  
May 6, 1977  
Page Five

If a certificate of need were required prior to the purchase of land where the purchaser has no immediate intent to provide services or facilities in connection therewith, the requirement would be inconsistent not only with the language of A.R.S. § 36-433 emphasized above but also would be contrary to the purpose of nearly all of the the ten minimum requirements therein.

It is therefore our opinion that A.R.S. § 36-433 does not require a person to obtain a certificate of need prior to the purchase of land where there is no contemporaneous plan to undertake any substantial expenditures in preparation for the improvement or utilization of the land for health care institution purposes. Such certificate, however, is required prior to the time the land is utilized in connection with the development or offering of any new or substantially modified services or facilities if the sum of the cost of the land plus other capital expenditures exceeds three percent of the institution's budgeted annual expenses or one hundred thousand dollars, whichever is less.

Sincerely,



BRUCE E. BABBITT  
Attorney General

BEB:WJW:jrs